
(2006) 04 DEL CK 0112

In the Delhi High Court

Case No : Arbitration Petition No. 363 of 2005

Dr. Chetan Chopra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-04-2006

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(6)

Citation : (2006) 04 DEL CK 0112

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Sanjiv Bahl, for the Appellant; R.V. Sinha, for the Respondent

Final Decision : Disposed Off

Judgement

Anil Kumar, J.—This is a petition u/s 11(6) of the Arbitration and Conciliation Act, 1996 by the petitioner for appointment of arbitrator for adjudication of disputes which have arisen between the parties.

2. The petitioner contended that he is a Radiologist and is carrying on his profession under the name and style of Dr. Chopra's Bone Densitometry Centre and Lab, at 2 Rajouri Palace, J-1/162, Rajouri Garden, New Delhi as a sole proprietor. The petitioner entered into a Memorandum of Agreement dated 4th December, 2002 to put his lab for Central Government Health Scheme for diagnosis of members of CGHS beneficiaries under medical scheme in accordance with the terms and conditions incorporated in Memorandum of Agreement dated 4th December, 2002.

3. The approval was given to the laboratory of the petitioner after due inspection and inspection of the DEXA Bone Densitometry machine.

4. After the execution of Memorandum of Agreement dated 4th December, 2002, the petitioner started rendering services in accordance with the terms and conditions of Memorandum of Agreement dated 4th December, 2002 to the beneficiaries of CGHS scheme. It was contended that in January, 2004 another

inspecting team visited his laboratory, however, the inspecting team had no radiologist and Therefore, the bone densitometry machine of the petitioner could not be assessed properly. The inspecting team, however, gave a report about the alleged irregularities committed by the petitioner and it was recommended that CGHS beneficiaries be stopped being referred to the petitioner's lab. A show-cause notice was also given to the petitioner for termination of agreement dated 4th December, 2002 which was replied by the petitioner.

5. The petitioner contended that no irregularity has been committed by him and he was only having a diagnostic centre recognized only for bone densitometry. The petitioner stated that the machine is capable of performing test at multiple sides and the report given to the contrary rather reflected the non-comprehension of the inspecting team. The petitioner also emphasized that except the bone densitometry no other test could be performed by the said machine nor the diagnostic centre was meant for any other tests. The petitioner contended that despite this, the respondents have illegally and mala finely issued the letter dated 23rd September 2004 and stopped referring CGHS beneficiaries to the centre in violation to the terms and conditions of Memorandum of Agreement.

6. That aggrieved by the action of respondents, the petitioner had filed a civil writ petition No. 16656/2004 which was disposed of by order dated 15th October, 2004 directing the respondents to consider the report of the petitioner and decide the same within six weeks. The petitioner contended that despite the petitioner's letter dated 19th October, 2004 and another letter dated 26th October, 2004, the respondents still justified their earlier action of stopping reference of all the CGHS beneficiaries to the lab of the petitioner despite no lapse or violation of any terms and conditions of the memorandum of agreement by the petitioner and imputable to the petitioner.

7. The petitioner contended that illegal and unlawful act of the respondents have cost immense loss to the petitioner and the revocation of the agreement is also contrary to the terms and conditions. The petitioner also asserted that he raised total bills for Rs. 29,78,200.00 and he has already received a sum of Rs. 22,52,150.00 and a sum of Rs. 7,26,050.00 is still due. The petitioner also claimed a sum of Rs. 22,78,920.00 for the loss of professional work on account of illegal and unlawful termination of Memorandum of Agreement and also claimed a sum of Rs. 5,00,000.00 on account of harassment caused to the petitioner. The petitioner Therefore raised a claim for a total sum of Rs. 35,04,970.00.

8. The Memorandum of Agreement between the parties contains an arbitration clause in Clause 25 which is as under:-

In the event of any question, dispute or difference whatsoever at any time arising under the conditions of Agreement or in any other manner under this Agreement or in any way relating thereto or the true meaning or interpretation of

any of the provisions thereof (except as to any matters for which the decision is specifically provided for in the conditions of the Agreement), the same shall be referred to for decision to a sole Arbitrator who shall be nominee of the Director General of Health Services and the decision of the Arbitrator shall be final and binding on both the parties. It will be not objection that the arbitrator is a Government Servant and that he had to deal with the matters to which the contract relates or that in the course of his duties as a Govt. Servant he has expressed views on all or any of the matters in question, dispute or difference.

In the event of the arbitrator appointed by the Director General of Health Services dying, neglecting or refusing to act or resigning or being incapable or unable to act for any reason, whatsoever, it shall be lawful for the Director General of Health Services to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.

Subject as aforesaid, the Arbitration and Conciliation Act, 1996 or any modification or replacement and the rules there under and any statutory modifications thereof for the time being in force shall apply to the arbitration proceedings under this clause.

9. The petitioner, Therefore, invoked the arbitration agreement in terms of Clause 25 and sent a legal notice dated 4th October, 2005 through his counsel calling upon the respondents to appoint and nominate an arbitrator within 30 days to decide disputes relating to agreement dated 4th December, 2002, however, despite the receipt of the legal notice, the respondents had not appointed any arbitrator.

10. On failure of the respondents to appoint an arbitrator in terms of Clause 25 of the agreement containing arbitration agreement, the petitioner has filed the present petition u/s 11(6) of Arbitration and Conciliation Act, 1996.

11. The notice of the petition was served on the respondents and Mr. R.V. Sinha, Advocate appeared and sought time to file the reply. Despite the opportunities given to him, no reply has been filed.

12. Today the learned Counsel for the petitioner stated that the respondents are liable to appoint an arbitrator in accordance with Clause 25 of the agreement which contains the arbitration agreement.

13. The Clause 25 of the agreement contemplates appointment of a sole arbitrator to be a nominee of the Director General of Health Services for adjudication of the disputes arising out of the agreement between the parties.

14. The learned Counsel for the petitioner contended that despite the fact that the respondents have forfeited their right to appoint an arbitrator by Director General of Health Services, the petitioner will still accept appointment of a nominee of the Director General of Health Services as an arbitrator, if such an arbitrator is appointed expeditiously.

15. The learned Counsel for the respondents also stated that the Director General of Health Services will appoint his nominee as the Arbitrator to adjudicate the disputes between the petitioner and the respondents.

16. Considering the facts and circumstances and the averments made in the application and in accordance with Clause 25 of the agreement containing the arbitration agreement, Director General of Health Services is directed to appoint his nominee as an arbitrator within a period of six weeks. The intimation of appointment of the arbitrator by the Director General of Health Services shall be given to the petitioner.

17. In the circumstances, the petition is disposed with the direction to the Director General of Health Services to appoint the arbitrator within six weeks. With these directions the petition is disposed of and parties are left to bear their own cost.

18. Order dusty to the parties.